

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petitions: 45-004-11-1-5-00296-16
45-004-13-1-5-00338-16
45-004-16-1-5-00448-17
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-08-09-235-002.000-004
Assessment Years: 2011, 2013, & 2016

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

Procedural History

1. Petitioner initiated his 2011 appeal with the Lake County Property Tax Assessment Board of Appeals (“PTABOA”). The PTABOA issued notice of its final determination on November 20, 2015. On January 6, 2016, Petitioner filed a Form 131 petition with the Board.
2. Petitioner initiated his 2013 appeal with the Lake County PTABOA. The PTABOA issued notice of its final determination on November 20, 2015. On January 6, 2016, Petitioner filed a Form 131 petition with the Board.
3. Petitioner initiated his 2016 appeal with the Lake County PTABOA. The PTABOA issued notice of its final determination on March 9, 2017. On April 24, 2017, Petitioner filed a Form 131 petition with the Board.
4. Petitioner elected to have the appeals heard under the Board’s small claims procedures. Respondent did not elect to have the appeals removed from those procedures.
5. Ellen Yuhan, the Administrative Law Judge (“ALJ”) appointed by the Board, held the administrative hearing on April 23, 2018. Neither the ALJ nor the Board inspected the property.
6. James Nowacki, Petitioner, was sworn and testified. Robert W. Metz and Gordona Bauhan, Lake County Hearing Officers, were sworn as witnesses for Respondent.

Facts

7. The subject property is a vacant residential lot located at 1181 Pyramid Drive in Gary.

8. The PTABOA determined the following assessed values:¹

2011: \$8,500
2013: \$8,500
2016: \$4,000

9. Petitioner requested an assessed value of \$2,400 for all years at issue.

Record

10. The official record contains the following:

a. A digital recording of the hearing,

b. Exhibits:

Petitioner Exhibit 1:	Property record card (“PRC”) for the subject property for 2012-2016,
Petitioner Exhibit 2:	PRC for the subject property for 2007-2011,
Respondent Exhibit 1:	Real Property Maintenance Report for 2010 pay 2011,
Respondent Exhibit 2:	Real Property Maintenance Report for 2011 pay 2012,
Respondent Exhibit 3:	Real Property Maintenance Report for 2012 pay 2013,
Respondent Exhibit 4:	Real Property Maintenance Report for 2013 pay 2014,
Respondent Exhibit 5:	Real Property Maintenance Report for 2015 pay 2016,
Respondent Exhibit 6:	Real Property Maintenance Report for 2016 pay 2017,
Respondent Exhibit 7:	GIS map,
Respondent Exhibit 8:	PRC for the subject property for 2013-2017,
Board Exhibit A:	Form 131 petitions and attachments,
Board Exhibit B:	Notices of hearing,
Board Exhibit C:	Hearing sign-in sheet,

c. These Findings and Conclusions.

¹ The PTABOA determination for 2016 shows an assessed value of \$4,000. Petitioner Exhibit 1 and Respondent Exhibit 8 both show \$7,200 as the 2016 assessed value.

Burden

11. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that a property's assessment is wrong and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). A burden-shifting statute creates two exceptions to that rule.
12. First, Ind. Code § 6-1.1-15-17.2 "applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year." Ind. Code § 6-1.1-15-17.2(a). "Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court." Ind. Code § 6-1.1-15-17.2(b).
13. Second, Ind. Code § 6-1.1-15-17.2(d) "applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under Ind. Code § 6-1.1-15," except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), "if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct." Ind. Code § 6-1.1-15-17.2(d).
14. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
15. The assessed value increased by less than 5% from 2010 to 2011. Petitioner, therefore, has the burden of proof for 2011. The assessed value was the same for 2012 and 2013, so Petitioner has the burden for 2013. The assessed value decreased from 2015 to 2016, so Petitioner also has the burden for 2016.

Summary of Parties' Contentions

16. Petitioner's case:
 - a. Petitioner contends that external factors including a high crime rate, a high murder rate, and blighted conditions render the subject property unbuildable. The blighted conditions are indicated by the abandoned public housing project across the street and the other vacant and abandoned properties in the area. There is no development in the area and no interest in the property. *Nowacki testimony*.

- b. Petitioner contends the property has been owned by the county since 1991. There is no indication that the assessed values of \$8,500 for 2011 and 2013 or the current assessed value are correct given that the property has been “churning” through the tax sale system for 20 years. Petitioner claims there was no market interest in the property until he purchased it ten years ago. *Nowacki testimony; Pet’r Exs. 1 & 2.*
- c. Petitioner contends that the recent slight decline in assessed value shows a “small degree of vectoring” in the right direction. He claims that it is, however, “entirely inadequate to address the devastated fair market value.” He proposes a more “reasonable” assessment of \$2,400. *Nowacki testimony; Pet’r Exs. 1 & 2.*
- d. Petitioner contends that the only way to save the City of Gary is to have timely, accurate, and fair market value assessments. He contends the over-assessment of properties drives residents from their properties. If properties were properly assessed, the market would step in and invest and rebuild the city. Without that, he claims, the city is going to continue its unabated precipitous decline. *Nowacki testimony.*

17. Respondent’s case:

Respondent contends Petitioner failed to present any probative evidence to support his requested value. *Bauhan testimony.*

ANALYSIS

18. Petitioner failed to make a prima facie case for a reduction in the assessed value for the years at issue. The Board reached this decision for the following reasons:

- a. Indiana assesses real property based on its true tax value, which the Department of Local Government Finance (“DLGF”) has defined as the property’s market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). To show a property’s market value-in-use, a party may offer evidence that is consistent with the DLGF’s definition of true tax value. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice (“USPAP”) will often be probative. *Kooshtard Property VI v. White River Township Assessor*, 836 N.E.2d 501, 506 (Ind. Tax Ct. 2005). Parties may also offer evidence of actual construction costs, sales information for the property under appeal, sale or assessment information for comparable properties, and any other information compiled according to generally accepted appraisal principles. *See Id.*; *see also*, I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties’ assessments to determine an appealed property’s market value-in-use).
- b. Regardless of the method used to prove a property’s true tax value, a party must explain how its evidence relates to the subject property’s market value-in-use as of the relevant valuation date. *O’Donnell v. Dep’t of Local Gov’t Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471

(Ind. Tax Ct. 2005). The valuation date for the 2011 and the 2013 assessments was March 1 of each assessment year. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c). The valuation date for 2016 was January 1, 2016. Ind. Code § 6-1.1-2-1.5.

- c. Petitioner contends the subject property should be assessed at \$2,400 for each year at issue. However, Petitioner presented no evidence to support that value. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).
- d. Petitioner contends the property suffers from negative external factors such as a blighted condition, a high crime rate, and lack of interest in development. External obsolescence is caused by an influence outside of a property's boundaries that has a negative influence on the property's value. *Clark v. Dep't of Local Gov't Fin.*, 77 N.E.2d 1277 (Ind. Tax Ct. 2002). To receive an adjustment for such obsolescence, a property owner must identify the causes of obsolescence present and quantify the amount of obsolescence it believes should be applied to his property. *Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230, 1241 (Ind. Tax Ct. 1998). While Petitioner identified some issues that might be the cause of such obsolescence, he failed to adequately quantify it.
- e. Petitioner had the burden for 2011 and failed to make a prima facie case for changing the assessment. Petitioner also had the burden for 2013 and 2016 and failed to make a prima facie case for either of those years as well. Where a petitioner has not supported its claim with probative evidence, the respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

CONCLUSION

- 19. Petitioner failed to make a prima facie case for a reduction in the assessed value for any of the years at issue. Consequently, the Board finds for Respondent.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Board determines the 2011, 2013 and 2016 values should not be changed.

ISSUED: July 13, 2018

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.